

TJAGSA Practice Notes

Faculty, The Judge Advocate General's School

Consumer Law Note

Fair Debt Collection Practices Act (FDCPA)

Is the Thirty-Day Period to Request Verification of a Debt a Dispute Period or a Grace Period?

Military practitioners often assist legal assistance clients who are in debt and are being contacted by debt collection agencies. To represent these clients adequately, legal assistance attorneys must be intimately familiar with the Fair Debt Collection Practices Act (FDCPA).¹ Congress passed the FDCPA in 1978 to protect consumers from abusive collection practices, and to ensure that collectors who refrain from abusive practices are not competitively disadvantaged.² Since passage of the FDCPA, there has been confusion in both the collection industry and the legal profession about certain provisions of the Act.

The FDCPA contains many protections for debtors. It requires the debt collector to inform the debtor of his rights under the Act in the initial communication, or within five days of the initial communication with the debtor.³ One right the col-

lector must include in this notice is the debtor's right to dispute the debt within thirty days from the date of the notice.⁴ If the consumer notifies the debt collector in writing within the thirty-day period that the consumer disputes the debt, the debt collector must cease collection of the debt until after obtaining and mailing verification of the debt to the consumer.⁵

The issue is whether the thirty-day period to request verification of the debt is a dispute period or a grace period. The majority of court decisions indicate that collection activity can continue during the thirty-day dispute period.⁶ There are, however, court decisions holding that collection activity must cease until the thirty-day period has run, thereby making the thirty-day period a grace period.⁷ The Federal Trade Commission's (FTC)⁸ informal staff letters are also inconsistent on this issue.⁹

On 31 March 2000, the FTC addressed this issue in its first formal advisory opinion under the FDCPA.¹⁰ The FTC determined that collection activities may continue during the thirty-day period that the debtor may request validation of the debt. The FTC's position is that "Nothing within the language of the statute indicates that Congress intended an absolute bar to any

1. 15 U.S.C. § 1692 (2000). The FDCPA establishes general standards of proscribed conduct for debt collectors, defines and restricts abusive collection acts, and provides specific rights for debtors. *See id.*

2. S. REP. NO. 95-382, at 1 (1977), *reprinted in* NATIONAL CONSUMER LAW CENTER, FAIR DEBT COLLECTION app. B (4th ed. 2000) [hereinafter NCLC, FAIR DEBT COLLECTION]. Common abusive collection tactics include:

Phoning a debtor's parent, impersonating a government prosecutor, and requesting the parent to get the debtor to call about a criminal investigation regarding the debtor[; c]alling [five to fifteen] neighbors in a brief period of time, informing them that the debtor was suspected of receiving stolen goods, and asking them to go to the debtor's home and request the debtor to call the collector[; and t]hreatening the debtor and his parent with criminal charges for capital gains tax fraud unless the balance of the debt was put on the parent's credit card.

NCLC, FAIR DEBT COLLECTION, *supra*, at 33 (quoting *Fair Debt Collection Practice Act: Hearing Before the Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Finance, and Urban Affairs*, 102d Cong. 12-13 (1993) (testimony of Mr. Richard W. Bell, former debt collector)).

3. 15 U.S.C. § 1692. The most significant rights are: the right to terminate many future collection contacts, the right to stop contacts at work if the employer prohibits them; the right to stop contacts by obtaining counsel, and the right to obtain verification of a disputed debt. *See id.*

4. *Id.* § 1692g(a).

5. *Id.* § 1692g(b).

6. *See generally* NCLC, FAIR DEBT COLLECTION, *supra* note 2, at 255-60; NATIONAL CONSUMER LAW CENTER, FAIR DEBT COLLECTION 30-32 (4th ed. 2000 and Supp.).

7. NCLC, FAIR DEBT COLLECTION, *supra* note 2, at 255-60.

8. Section 1692i of the FDCPA appoints the FTC as the primary enforcement agency for the FDCPA. 15 U.S.C. § 1692i. As the enforcement agency, the FTC can issue informal staff letters (non-binding) or formal advisory opinions. *See id.* Acts done in conformity with an advisory opinion of the FTC are insulated from FDCPA liability. *See id.* § 1692k(e). FTC informal staff letters are not binding on the FTC or the courts and do not provide a defense for debt collectors. *See* Heintz v. Jenkins, 514 U.S. 291 (1995). Recent letters and the formal advisory opinion are available on the FTC Web site at <http://www.ftc.gov/os/statutes/fdcpa/letters.htm>.

9. NCLC, FAIR DEBT COLLECTION, *supra* note 2, at 258 n.997.

10. Mezines, Fed. Trade Comm'n Op. (Mar. 31, 2000), available at <http://www.ftc.gov/os/2000/04/fdcpaadvisoryopinion.htm>.

appropriate collection activity or legal action within the thirty-day period where the consumer has not disputed the debt.”¹¹

The Commission also opined that section 1692g permits a collection agency to either demand payment or take legal action during the thirty-day period for disputing a debt when a consumer has not notified the collection agency that the consumer disputes the debt.¹² The collection agency must ensure, however, that its collection activity does not overshadow and is not inconsistent with the disclosure of the consumer’s right to dispute the debt.¹³

This opinion brings the FTC in line with the weight of judicial authority on this subject. Most courts view that section 1692g allows collection activity within the thirty-day period or until the debt collector receives a written dispute, provided the collection activities do not overshadow the debtors right to dis-

pute the debt.¹⁴ Any debt collection activities during the validation period should not contradict, obscure, or confuse an unsophisticated consumer about the legal right to obtain verification of the debt.

The key to temporarily stopping collection activity is a written dispute of the debt. Legal assistance attorneys should encourage clients to invoke their right to dispute debts, when appropriate. This provides the legal assistance attorney additional time to investigate the validity of the debt, and the debtor additional time to gather the funds necessary to make payment if the debt is valid. Because this right is only effective if the collector receives the dispute within thirty days from the first collection notice, legal assistance attorneys must include information about this right, and the others provided under the FDCPA, in preventive law briefings and information papers. Major Kellogg.

11. *Id.*

12. *Id.*

13. *Id.*

14. *See supra* note 6.